

This letter describes the application of Telecommunications Excise Tax and Telecommunications Municipal Infrastructure Maintenance Fees to prepaid phone cards. See 86 Ill. Adm. Code 495.110. (This is a GIL).

October 6, 1999

Dear Xxxxx:

This letter is in response to your letter dated August 10, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing you per PERSON at DOR. I spoke to PERSON on August 10, 1999. He relayed to me the disposition of PPC's with regard to the IMF. I requested something in writing. He stated that I would have to write to this department. Hence, I am doing so. My exact Query(s) is (are) this:

1. Are Prepaid Phone Cards assessed and/or levied the IMF?
2. If the answer to (1) is yes, then at what point are they assessed? (Point of 'sale' or Point of 'use')?
3. If at Point of 'sale', at what point of sale? (Telecom provider to Phone card company?, Phone card company to Retail vendor or Retail vendor to Individual end-user)?
4. If at Point of 'use', who is the liable party to pay, collect and remit the fee?
5. If at Point of 'use', is the taxes then wrapped into the card already? Or how would the telecom provider pass on the taxes to the end-user, if the end-user has already bought the card and is now gone?

I thank you in advance for your prompt attention and consideration to this matter.

We are answering your letter under the assumption that the term "IMF" referenced in your letter stands for Telecommunications Infrastructure Maintenance Fee. The Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 et seq.), effective January 1, 1998, provides for the imposition of various fees upon telecommunications retailers. Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than

wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b)) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c)). These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b)).

As we noted in our previous letter to you dated August 27, 1999, the application of the Telecommunications Municipal Infrastructure Maintenance Fee is similar to the application of Telecommunications Excise Tax when prepaid phone cards are involved. Retailers who purchase telephone cards from telephone service providers and then resell the cards to customers for marked-up prices are not responsible for collecting and remitting the Telecommunications Excise Tax from the customers. The excise tax is incurred at the time the telecommunications originate or are received in a taxable manner, and the amount of telecommunications charges for which the cards are redeemed by the telephone service providers should include any amount of Telecommunications Excise Tax and Telecommunications Municipal Infrastructure Maintenance Fee incurred. The telephone service providers charge the phone calls and the tax against the balance of the cards, as they are responsible for collecting and remitting the tax. Under this scenario, the Telecommunications Municipal Infrastructure Maintenance Fee Act which provides for the imposition of various fees upon telecommunications retailers would not be applicable to the sale of cards by retailers.

On the other hand, retailers that purchase telecommunications units from telephone service providers and sell them at retail to their customers present situations similar to hotels that sell telecommunications services. See 86 Ill. Adm. Code 495.110, enclosed. In these cases the retailers would be required to register as telecommunications retailers and collect and remit Telecommunications Excise Tax. The tax base would be the amounts charged to card purchasers for the taxable services subsequently provided (i.e. calls that originate or terminate in Illinois). When such cards are sold in Illinois, the Department presumes calls will originate or terminate in this State. Retailers have the burden to establish that charges are exempt from the Telecommunications Excise Tax. The only way to document this would be through records of the telephone service providers. Therefore, as a practical matter, because retailers will not know when sales are made what taxable services cardholders will later consume, retailers should charge the tax on the full sales prices of the cards. Under this scenario, the Telecommunications Municipal Infrastructure Maintenance Fee Act which provides for the imposition of various fees upon telecommunications retailers would be applicable to sales made by retailers.

For specific information regarding these issues in reference to Municipal Telecommunications Infrastructure Maintenance Fees, we recommend that you contact the municipalities that have imposed those fees.

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I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.